

Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

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O 021703Z AUG 76 ZFF-4

FM AMEMBASSY ATHENS

TO SECSTATE WASHDC IMMEDIATE 5901

INFO AMEMBASSY ANKARA IMMEDIATE

C O N F I D E N T I A L ATHENS 7815

EXDIS

E.O. 11652: GDS

TAGS: PFOR, PLOS, GR, TU

SUBJECT: TURKISH SEISMIC VESSEL: GREEK LEGAL DOCUMENT

REF: ATHENS 7814

1. THIS TELEGRAM CONTAINS THE TEXT OF THE DOCUMENT PRIME MINISTER CARAMANLIS GIVE ME YESTERDAY, SETTING FORTH A LEGAL OPINION CONCERNING SEISMIC RESEARCH IN THE AEGEAN. (WHILE THE LANGUAGE AND ARGUMENTS CONTAINED IN THIS DOCUMENT MAYBE REFERRED TO ON A CLASSIFIED AND RESTRICTED BASIS IF APPROPRIATE, THE FACT THAT WE HAVE THE FULL TEXT AND THAT THE DOCUMENT ITSELF WAS GIVEN TO ME PERSONALLY BY CARAMANLIS SHOULD NOT BE REVEALED.) CARAMANLIS DID NOT KNOW FULL DETAILS CONCERNING THE AUTHORS OF THE DOCUMENT, BUT HE SAID THEY WERE WELL-KNOWN "AMERICAN INTERNATIONAL LAWYERS" AND THAT THEIR NAMES WERE MACDOUGAL AND NEIL.

2. BEGIN TEXT OF DOCUMENT:

(1) ARTICLE 2 OF THE GENEVA CONVENTION RECOGNIZES THE ((SOVEREIGN RIGHTS)) OF A COASTAL STATE OVER THE CONTINENTAL SHELF FOR THE ((PURPOSES OF EXPLORING AND EXPLOITING ITS NATURAL RESOURCES)). ARTICLE 2 HAS BEEN HELD BY THE INTERNATIONAL COURT TO BE CUSTOMARY LAW, BINDING NON-SIGNATORIES. ARTICLE 5 (8) OF THE CONVENTION IS NO MORE THAN A PROCEDURAL ILLUMINATION
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AND MAY BE DEEMED TO BE INCLUDED IN ARTICLE 2. THE

TURKISH FOREIGN MINISTER MAKES CLEAR THAT THE PURPOSE OF THEIR RESEARCH IS TO LOCATE RESOURCES. FULLY APART FROM ARTICLE 5 (8) ((THE CONSENT OF A STATE WITH SOVEREIGN RIGHTS OR A CONTINENTAL SHELF MUST BE

REQUIRED FOR EXPLORATION OF THAT SHELF)). ANY EXPLORATION CONCERNING NATURAL RESOURCES AND ANY RESEARCH UNDERTAKEN BY TURKEY, WITHOUT GREEK PERMISSION, OF THE SHELF IS MOST PLAINLY A VIOLATION OF GREEK SOVEREIGN RIGHTS IN THE SHELF IN VIOLATION OF ARTICLE 2 (2) OF THE GENEVA CONVENTION.

(2) TURKEY CANNOT PERSUASIVELY MAINTAIN THAT SEISMIC RESEARCH IS PURELY SCIENTIFIC AND HENCE PERMISSIBLE, EVEN WITHOUT GREEK PERMISSION. THE VIOLATION OF SOVEREIGN RIGHTS VOUCHSAFED IN THE CONVENTION DOES NOT DEPEND UPON THE MODALITY USED, BUT UPON THE PURPOSES FOR CONDUCTING THE RESEARCH, AND ITS EFFECTS. IF IT RELATES TO NATURAL RESOURCES, IT IS WITHIN THE EXCLUSIVE SOVEREIGN RIGHTS OF GREECE. THE TURKISH FOREIGN MINISTER MAKES CLEAR THAT THE DESIRED OUTCOME IS FOR LOCATION OF RESOURCES OF THE SHELF.

(3) SCIENTIFIC DISTINCTIONS BETWEEN SEISMIC OR SONAR RESEARCH AND RESEARCH METHODS TOUCHING OR PENETRATING THE SURFACE OF THE SHELF ARE NOT CONCLUSIVE IN INTERPRETING THE NORMS OF THE CONVENTION. ANY METHOD, THE OUTCOME OF WHICH IS TO INFRINGE THE COASTAL STATE'S SOVEREIGN RIGHTS TO EXPLORE AND EXPLOIT THE NATURAL RESOURCES OF ITS SHELF IS IN VIOLATION.

(4) ARTICLE 5 (8) IS NO MORE THAN A DETAILED ILLUMINATION OF RIGHTS THAT ADHERE IN SOVEREIGNTY UNDER ARTICLES 1 AND 2 OF THE CONVENTION. THESE ARTICLES HAVE BEEN AUTHORITATIVELY HELD TO HAVE BECOME CUSTOMARY INTERNATIONAL LAW, BINDING, ERGA OMNES. HENCE TURKEY IS BOUND TO RESPECT GREECE'S SOVEREIGNTY, WHOLLY APART FROM ARTICLE 5 (8).

(5) AS WE SHOW IN DETAIL IN OUR OPINION OF AUGUST 10, 1974, IN THE ABSENCE OF AGREEMENT OR THIRD PARTY DETERMINATION, A MEDIAN OR EQUIDISTANT LINE DELIMITS THE CONTINENTAL SHELF OF 2 STATES (SEE PAGES 33-73). HENCE, THERE IS NO LEGAL FOUNDATION FOR TURKEY'S CON-

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TENTION THAT GREECE ENJOYS NO RIGHTS IN THIS AREA. ON THIS CONSEQUENCE GREECE ENJOYS FULL RIGHTS ON ITS HALF OF THE MEDIAN TO EQUIDISTANT LINE, AS EXPLAINED IN OUR OPINION. THE TURKISH FOREIGN MINISTER MAKES IT CLEAR THAT HE REJECTS THIS VIEW OF THE RELEVANT LAW.

(6) GREEK RIGHTS WOULD NOT, REPEAT NOT, BE ADEQUATELY SAFEGUARDED IF IT NOW CONTENTED ITSELF WITH A STATE-

MENT THAT THE TURKISH RESEARCH ON THE GREEK SHELF DOES NOT PREJUDICE ITS RIGHTS. WHATEVER THE PURPORT OF THE STATEMENT, THE HARSH FACT REMAINS THAT SOVEREIGN RIGHTS WILL HAVE BEEN WAIVED IN FAVOR OF A (#) STATE. THE TURKISH FOREIGN MINISTER IS ASSERTING THAT GREECE MAY HAVE NO SOVEREIGN RIGHTS BEYOND THE TERRITORIAL SEA.

(7) IN OUR VIEW, GREEK RIGHTS WOULD BE PREJUDICED BY A UNILATERAL TURKISH STATEMENT EVEN WITH PRIOR AGREEMENT, ASSERTING RESERVATION OF THE RIGHTS OF EACH PARTY. THERE IS NO CONTEXT OF JUDGEMENT TO ABIDE BY THE LAW. THE TURKISH GOVERNMENT IS HOPING THAT THE LAW WILL BE CHANGED. IN VIEW OF OUR ANSWERS TO QUESTIONS 6 AND 7, WE THINK THAT TURKISH ACTIVITIES ON THE GREEKSHELF ARE ACTIONABLE AT THE INTERNATIONAL COURT OF JUSTICE, ASSUMING JURISDICTION, AND WOULD, MOREOVER, APPEAR TO FALL UNDER THE JURISDICTIONAL AMBIT DISCUSSED IN OUR MEMORANDUM OF JULY 20, 1976. WITH RESPECT TO A REQUEST FOR THE INVOCATION OF INTERIM MEASURES, THE QUESTION OF WHETHER THERE IS IRREPARABLE DAMAGE, MAY REQEPRE SOME STUDY. WE WOULD REFER IN THIS RESPECT TO OUR RECENT MEMORANDUM TO YOU.

(8) YOUR FINAL UNNUMBERED QUESTION ASKS IF ARTICLE 2 PRESUPPOSES PHYSICAL RESEARCH, AS OPPOSED TO SEISMIC, OR SONAR, RESEARCH. THE INTERPRETATION, BASED ON THE FRENCH WORD//TOUCHANT// IS QUITE FORCED, AND IS PLAINLY REJECTED BY THE REST OF THE TEXT, BY CURRENT STATED EXPECTATIONS, AND BY COMMON SENSE. IT IS NOT THE MEANS OR MODALITY BY WHICH EXPLORATION IS CONDUCTED, BUT THE FACT THE EXPLORATION OF THAT SHELF RESOURCES IS BEING CONDUCTED IN VIOLATION OF THAT COASTAL STATE'S CONFIDENTIAL

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SOVEREIGN RIGHTS. HOWEVER IT IS TRANSLATED, ARTICLE 5 (8) IS EXPLICIT IN DENYING A RIGHT TO SCIENTIFIC RESEARCH ABOVE THE CONTINENTAL SHELF, WITHOUT THE CONSENT OF THE COASTAL STATE. END TEXT OF DOCUMENT

3. COMMENT: I RECOGNIZE THAT WE HAVE TRIED TO AVOID TAKING A LEGAL POSITION ON SOME OF THE QUESTIONS ADDRESSED IN THE FOREGOING DOCUMENT. HOWEVER, I RECOMMEND THAT WE RECONSIDER THIS POSITION OF OURS. IN ANY CASE, IT SEEMS TO ME SOME MEANS MUST BE FOUND OF DEALING WITH THE GREEK VIEW THAT THE LAW IS SO OVERWHELMINGLY ON THEIR SIDE IN THEIR DISPUTES WITH TURKEY IN THE AEGEAN. IF THE DEPARTMENT DOES NOT BELIEVE WE SHOULD ENDEAVOR TO WORK OUT A FULLY DEVELOPED LEGAL POSITION ON THESE QUESTIONS, PERHAPS SOME

KIND OF ABBREVIATED AIDE-MEMOIRE, DEALING WITH THE
1958 CONTINENTAL SHELF CONVENTION, COULD BE PREPARED
WHICH COULD BE GIVEN TO JOHN TZOUNIS AT THE FOREIGN
MINISTRY HERE IN ATHENS, SINCE HE APPEARS TO BE COOR-
DINATING ALL LEGAL OPINIONS AND ANALYSIS ON THIS SUB-
JECT THAT ARE BEING CONSIDERED BY THE GREEK GOVERNMENT.
SHOULD WE DECIDE TO PRESENT SUCH AN AIDE-MEMOIRE, IT
COULD BE DRAFTED IN SUCH A WAY AS TO MAKE CLEAR--
SHOULD IT BY ANY CHANCE EVER BECOME PUBLIC--THAT WE
WERE NOT TAKING SIDES IN THE GREEK-TURKISH DISPUTE,
BUT MERELY POINTING OUT THE LACK OF CLARITY AND THE
SEVERAL MAJOR LEGAL AMBIGUITIES THAT SURROUND CONTINENTAL
SHELF ISSUES.
KUBISCH

NOTE BY OC/T: ATHENS 7815 - (#) TEXT GARBLED; CORRECTION TO FOLLOW.

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, DOCUMENTS, LAW, RESEARCH, PFOR, SISMIK I R/V, OCEANS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 AUG 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976ATHENS07815
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: RR
Errors: N/A
Film Number: D760297-1105
From: ATHENS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760897/aaaadhq.tel
Line Count: 184
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: 76 ATHENS 7814
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 30 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <30 APR 2004 by CollinP0>; APPROVED <18 AUG 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: TURKISH SEISMIC VESSEL: GREEK LEGAL DOCUMENT
TAGS: PLOS, PFOR, GR, TU
To: SECSTATE WASHDC ANKARA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006